HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE
AND
HON'BLE SHRI JUSTICE C.V.NAGARJUNA REDDY

Writ Appeal No.1251 of 2006

Between

Salvaji Veeresham ..Appellant

AND

The Mandal Revenue Officer, Karimnagar and others ..Respondents

Writ Appeal No.1252 of 2006

Between

Perumandla Eshwaraiah ..Appellant

AND

The Mandal Revenue Officer, Karimnagar and others ..Respondents

Writ Appeal No.1253 of 2006

Between

Pattem Veeramallaiah ..Appellant

AND

The Mandal Revenue Officer, Karimnagar and others ..Respondents

Writ Appeal No.1254 of 2006

Between

Perumandla Bhoomaiah ..Appellant

AND

The Mandal Revenue Officer, Karimnagar and others ..Respondents

Contd..

Writ Appeal No.1255 of 2006

Between

Rachakonda Tirupathji ..Appellant

AND

The Mandal Revenue Officer, Karimnagar and others ..Respondents

Writ Appeal No.1256 of 2006

Between

Poodari Veeramma ..Appellant

AND

The Mandal Revenue Officer, Karimnagar and others ..Respondents

Writ Appeal No.1257 of 2006

Between

Bomma Balaiah ..Appellant

AND

The Mandal Revenue Officer, Karimnagar and others ..Respondents

:: JUDGMENT ::

Counsel for the appellants (in all Writ Appeals)	Sri S.Satyam Reddy
Counsel for respondents (in all Writ Appeals)	Government Pleader for Assignment

4.1.2007

Per G.S.Singhvi, CJ

These appeals are directed against orders dated 16.10.2006 and 18.10.2006 passed by the learned Single Judge in Writ Petition Nos.21207, 21275, 21277, 21500, 21501, 21519 and 21520 of 2006, whereby he rejected the appellants' prayer for quashing proceedings dated 23.9.2006 issued by Mandal Revenue Officer, Karimnagar (respondent No.1) for cancellation of assignment of lands made to them or their predecessor.

For the sake of convenience, we have taken the facts from the record of Writ Appeal No.1251 of 2006.

Shri Rajaiah (father of appellant – Salvaji Veeresham) was allotted one acre of land in survey No.439/1 situated in Chinthakunta Village, Karimnagar Mandal and District about 40 years ago by being treated as landless poor. After taking possession, Shri Rajaiah is said to have constructed a mud house. After his death, the appellant and his two brothers divided the land, which was further sub-divided among their wards and as on date, each of the family members is having 400 square yards of land. Respondent No.1 issued notice dated 29.04.2006 to the appellant proposing to resume the land by indicating that the same was required for giving house site pattas to 6,000 poor persons of Karimnagar town and no other suitable land is available for that purpose. The appellant and his brothers filed replies to contest the notice. They pleaded that they do not have any other land; that they had developed the land by removing the boulders and are cultivating the same for more than three decades and if they are deprived of the land, they will loose the only source of livelihood. Respondent No.1 briefly adverted to the plea of compassion put forward by the appellant but cancelled the assignment by observing that the land is required for providing house sites to the poor people and the Government has issued orders for taking over the lands.

The appellant challenged the order of cancellation primarily on the ground of arbitrary exercise of power and malafides. In paragraphs 4 and 5 of the affidavit filed by him, the appellant averred as under:

> "While so, our village people have been supporting a particular political party which was not liked by the party in power and they had threatened that if we do not support, our land would be resumed. The first respondent under political

influence has issued a notice stating that the land would be resumed vide his notice dated 29.4.2006. We have submitted our reply stating that our father was assigned the land under the scheme for landless poor and that the land was full of boulders and rocks and that we have removed them and that our livelihood is depending upon this land only and that we have no other land and therefore requested not to resume the land. However, the first respondent had proceeded to issue the impugned Proces.No.B/1580/2006-1, dated 23.9.2006. Aggrieved by the same, the petitioner is constrained to approach this Hon'ble High Court.

I submit that the action of the first respondent in issuing the impugned Procs.No.B/1580/2006-1, dated 23.9.2006 is arbitrary and illegal and also is politically motivated. I submit that we are ourselves very poor and have no more than 400 square yards for each adult family member and we cannot be deprived of our land to be given to other landless poor. I submit that despite knowing all the facts the first respondent had issued impugned order. I further submit that the impugned order is passed invoking condition No.15 wherein the assigned land can be resumed if the same was done by mistake of fact or obtained by fraud. In the case of the petitioner both are not available and therefore the impugned order is liable to be set aside on this ground also. I further submit that vacant Government land is available in Survey No.439 itself which can be allotted to others. In the adjoining village Kamanpur also Government land is available but with malafide intention our land is being resumed."

The learned Single Judge did not call upon the respondents to file counter affidavit to admit or controvert the averments contained in the affidavit of the appellant, but dismissed the writ petition by relying on oral statement made by the Government Pleader for Assignment and the conditions of assignment. The learned Single Judge held that the scheme framed by the Government for providing house sites to the poorer sections of the society is certainly a public purpose and no illegality was committed by cancelling the assignment made in favour of the petitioner's father.

The learned Single Judge dismissed other writ petitions filed for quashing similar orders passed by respondent No.1. At the commencement

of arguments, learned Government Pleader made an oral request for grant of leave to the respondents to file counter affidavit by stating that the writ petitions were disposed of by the learned Single Judge without giving opportunity to the respondents to file counter affidavit, but having heard the arguments of the learned counsel, we are convinced that the orders under challenge are liable to be set aside with a direction for fresh adjudication of the writ petitions and, therefore, we do not consider it proper to entertain the request of the learned Government Pleader.

In our opinion, writ petition involving challenge to executive action of the State and its functionaries on the ground that the same has resulted in violation of constitutional and/or legal rights cannot be decided by the Court without calling upon the respondents to file counter-affidavit, except when the Court is fully convinced that the case set up by the petitioner is frivolous and vexatious or wholly merit less or that no useful purpose would be served by requiring the respondents to file counter-affidavit. We are further of the view that the Court cannot ordinarily dismiss the writ petition on the basis of oral statement made by the learned counsel appearing for the State and its agencies and instrumentalities, because the other side does not get an opportunity to controvert such oral statement.

Adverting to the facts of these cases, we find that the appellants are sought to be deprived of small parcels of land for allotting the same as house sites to the poor people of Karimnagar District. Undisputedly, the appellants also belong to the poorer section of the society. The lands were allotted to them and their predecessor many decades ago. They have constructed kacha shelters and have been eaking their livelihood by doing small agricultural operations. If they are deprived of the small parcels of land possessed by them, which appeared to be the only source of livelihood and shelter available to them, their constitutional right to life guaranteed under Article 21 of the Constitution will be seriously geopardised. Therefore, notwithstanding the fact that the purpose for which the parcels of land belonging to the appellants are sought to be resumed is laudable, the respondents were duty-bound to consider whether it would be justified to

deprive them of the land and their only source of livelihood and shelter for the purpose of accommodating the members of another poor section of the society. The tenor of the orders of resumption passed by respondent No.1 shows that the Government had already decide to allot the land in question to the poor people of Karimnagar District for the purpose of house sites and, therefore, no option was left with respondent No.1 but to resume the land. It is extremely difficult, if not impossible, to comprehend the rationale of the Government's decision to provide house sites to people belonging to one poor strata of the society by depriving people belonging to another section of the shelter already available to them. These and other issues ought to have been addressed by the learned Single Judge and decided by calling upon the respondents to file counter-affidavit to justify resumption of the land belonging to the appellants. The respondents should also have been called upon to show whether any other alternative site is available, where the other land less poor persons could be accommodated. Indeed, on this issue, the respondents did not put forward their case on factual parameters and, on that account, the appellant did not get an opportunity to plead and prove that other land was available where the other land less poor persons can be allotted house sites.

In the result, the appeals are allowed and the orders under challenge are set aside. The writ petitions filed by the appellants are admitted for hearing. The respondents are directed to file counter-affidavits within two weeks clearly stating therein whether or not any other land is available for allotment to the landless poor persons for house sites. The writ petitioners may file rejoinder affidavits within next one month. Thereafter, the cases be listed for final adjudication before the Single Bench as per roster.

As a sequel to disposal of the main appeals, W.A.M.P.Nos.2624, 2625, 2626, 2627, 2628, 2629 and 2630 of 2006 filed by the appellants for interim relief are disposed of as infructuous.

G.S.SINGHVI, CJ

C.V.NAGARJUNA REDDY,J

04.01.2007.
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